

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JOEL KRIEGER, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

ATHEROS COMMUNICATIONS, INC.,
DR. WILLY C. SHIH, DR. TERESA H.
MENG, DR. CRAIG H. BARRATT,
ANDREW S. RAPPAPORT, DAN A.
ARTUSI, CHARLES E. HARRIS,
MARSHALL L. MOHR, CHRISTINE
KING, QUALCOMM INCORPORATED,
and T MERGER SUB, INC.,

Defendants.

Case No.: 11-CV-00640-LHK

ORDER REQUESTING
CLARIFICATION REGARDING
PLAINTIFF'S AMENDED COMPLAINT

On April 11, 2011, Defendants filed a motion to dismiss Plaintiff's Complaint which is set for hearing on July 21, 2011. Pursuant to the briefing schedule set by the Court, Plaintiff's opposition was due June 9, 2011. On that day, rather than filing an opposition, Plaintiff filed an administrative motion to file a First Amended Class Action Complaint under seal.

Pursuant to Federal Rule of Civil Procedure 15(a) a party may amend its pleading once as a matter of course within 21 days after service of a responsive pleading or a Rule 12(b) motion, whichever is earlier. Thereafter, "a party may amend its pleading only with the opposing party's written consent or the court's leave." Fed. R. Civ. Pro. 15(a)(2). As more than 21 days have

1 passed since Defendants filed their motion, it would appear that the time for Plaintiff to amend his
2 complaint as of right has expired.

3 Based on Plaintiff's administrative motion, it appears that the parties have conferred
4 regarding Plaintiff's plans to file an amended pleading. However, there is no indication that
5 Defendants have consented to the amendment. Accordingly, the Court seeks clarification as to
6 whether Defendants have consented to amendment of the complaint, and whether the pending
7 motion to dismiss is now moot. If Defendants are not willing to consent to Plaintiff's proposed
8 amendment, Plaintiff must file a motion for leave to amend. *See Jackson v. Bank of Hawaii*, 902
9 F.2d 1385, 1387 (9th Cir. 1990) ("Although [Rule 15] should be interpreted with extreme
10 liberality, leave to amend is not to be granted automatically.") (quotation marks and citation
11 omitted). The parties shall file a joint statement providing clarification on these issues by
12 Wednesday, June 15, 2011.

13 **IT IS SO ORDERED.**

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15 Dated: June 10, 2011



16 LUCY H. KOH
17 United States District Judge
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